

REMARKS

Claims 1-33 are pending in the application. Claims 1-4 and 6-33 stand finally rejected. Claim 5 was objected to. No claims have been allowed.

Claims 2-5, 14, 19 and 20 are being canceled without prejudice or disclaimer of rights to any subject matter. Claims 1, 12, 13, 15-18, 24, 26 and 32 are being amended to more particularly define the invention. Specifically, claim 1 is being amended to incorporate the limitations of claim 5, which the Examiner has indicated pertains to allowable subject matter. Claim 12, which depends from claim 1, is being amended to delete the reference to "FIG. 1." Claims 13, 18, 24 and 26 are being amended to depend from newly amended claim 1. Claims 15-17 are being amended to change their dependency from canceled claim 14 to newly amended claim 13. Claim 32 is being amended to more clearly identify the recited compound. No new matter has been introduced by these amendments.

Upon entry of the amendments, claims 1, 6-13, 15-18 and 21-33 will be present in the application. Reconsideration and allowance of these claims in view of the amendments above and the remarks below are respectfully requested.

Claim Rejections – 35 U.S.C. § 102

Claims 1-4 and 6-33 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by Grunenberg (US 5,849,752). According to the Examiner, Grunenberg teaches a crystalline form of anhydrous moxifloxacin monohydrochloride and provides several drawings of different scans that appear to have some of the same peaks as were being claimed.

Claims 2-4, 14, 19 and 20 are being canceled, thereby rendering the rejection with respect to these claims moot. With regard to claims 1, 6-13, 15-18 and 21-33, and in the interest of expediting prosecution, Applicants are amending claim 1 to incorporate the limitations of claim 5, which the Examiner has indicated covers allowable subject matter. Specifically, claim 1, as amended, now recites a compound which is a crystalline Form III of anhydrous moxifloxacin monohydrochloride having substantially the same X-ray diffraction pattern as shown in FIG. 1. As the Examiner acknowledged, the X-ray diffraction pattern of FIG. 1 is distinctly different than the one provided in FIG.

4A of Grunenberg. Accordingly, Applicants submit that claim 1 is not anticipated under § 102(b), and reconsideration of this rejection is respectfully requested.

In addition, claims 6-13, 15-18 and 21-33 as amended all ultimately depend from claim 1. As such, they also incorporate the X-ray diffraction pattern of FIG. 1, which is acknowledged to be distinct from the one provided in FIG. 4A of Grunenberg. Accordingly, Applicants submit that claims 6-13, 15-18 and 21-33 are not anticipated under § 102(b), and reconsideration of this rejection is respectfully requested.

Claim Objection

Claim 5 was objected to because it depended from a rejected base claim. As discussed above, claim 5 is being canceled, and its subject matter incorporated into claim 1. Accordingly, withdrawal of this objection is respectfully requested.

CONCLUSION

It is believed that all of claims 1, 6-13, 15-18 and 21-33, as amended, are in condition for allowance, early notice of which would be appreciated. If any outstanding issues remain, the Examiner is invited to telephone the undersigned at the number indicated below to discuss the same.

Respectfully submitted,

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